IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 82 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BAVAJI MANSUKH LAXMIDAS

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 82 of 1997

MR HRIDAY BUCH for NANAVATY ADVOCATES for Appellant No.

MR RC KODEKAR Ld. APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 06/04/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

1. The appellant has challenged his conviction under sec. 302 of Indian Penal Code and the order of sentence to suffer imprisonment for life and to pay a fine of Rs. 500/-, in default, to undergo further R/I for three months imposed by the Ld. Addl. Sessions Judge, Junagadh in Sessions Case No. 41/1994 by judgment dated 31.12.1996.

2. The appellant was prosecuted for causing death of his wife Gitaben. According to the prosecution, Gitaben had conceived and she was having about 1 and 1/2 months pregnancy at the time when incident took place. It appears from the record that on earlier two occasions, she had conceived and cesarean was required to be performed on both the occasions. She was, therefore, apprehensive that on the third occasion also she might face difficulty. The apprehension was based on the opinion expressed by doctor, who had performed the cesarean on earlier occasions. She, therefore, asked her husband i.e. appellant to allow her to get the pregnancy terminated. He, however, flatly refused. That appears to be the cause of quarrel between the two. So much so that when t he mother of the deceased had received injuries on account of buffalo attacking her and she was unable to do household work, therefore, her relative had come to call the deceased to stay at her parental home for some time so as to look after the family members and her parents, it was not liked by the appellant. He suspected that if the deceased was taken to her parental home, she would get an opportunity to get the pregnancy terminated. He, therefore, told the father of the deceased, who was first informant in this case and one Meramanbhai Danabhai, who accompanied him to the house of the appellant to fetch the deceased that if they wanted to take her, they should do so in the presence of panchas. He even called the Sarpanch Rambhai Arjanbhai and five to seven other persons and only thereafter he allowed deceased to go with her father in the presence of these people. The father was also asked by the sarpanch that he should bring back the deceased within a week. On 23.1.1994, the informant and said Meraman again brought back the deceased to village Bamnasa, where the appellant was residing and left her there at the house of the appellant. Of course, they first went to the house of sarpanch and informed him that they had come to leave the deceased with the appellant. The informant and Meramanbhai also told the sarpanch that necessary

treatment was taken by the deceased from Dr. Jalu at Junagadh and showed him the bills of the treatment. Thereafter, they went to the farm of the appellant, where the appellant, his father Laxmandas and uncle Amrutlal were present. They were also informed that the deceased was taken to the doctor at Junagadh and she had taken treatment from him. It was told to them that in the opinion of the doctor, this time, the deceased would not have any difficulty during the pregnancy and the delivery of a child. The informant told the appellant that on every 22nd day of the month, the deceased was required to be taken to the doctor.

On 24.1.1994, at about 11.00p.m., one Hardas Master, resident of village Bamnasa and Kasam Gameti, resident of village Maliyasa approached the informant. They were on a motorbike and with them was the daughter of deceased Gitaben. The informant was told by them that at about 10.00pm the appellant had caused death of the deceased in the farm by inflicting blows with heavy hammer. The informant immediately summoned the former sarpanch of village Nunarada and apprised him of what had happened. They in the company of Rabari Kala Hardas and the son of informant Bharat, went to the police for lodging the FIR. The police station is at a distance of about 21 km. from the place of incident. The information was given to police station at Keshod and the offence against appellant was registered at CR NO. I-12/1994. The offence was registered under sec. 302 of Indian Penal Code. After registration of the offence, the police commenced the investigation, during which, statements of various persons including that of the daughter of the deceased and the appellant were recorded, various panchnamas were drawn, the body of wife of the appellant was sent for autopsy; the appellant was arrested, the muddamal article namely; the weapon was seized and was sent to FSL for examination etc. After completion of investigation, charge-sheet was filed in the court of Judicial Magistrate First Class, Junagadh, who in turn, committed the case to the court of Sessions since the offence under sec. 302 of IPC is exclusively triable by the Court of Sessions.

3. At the trial, ld. Judge framed the charge at ex. 1 on 3.6.1996. It was for the offence under sec. 302 of IPC. The appellant pleaded not guilty and claimed to be tried.

To substantiate its case against the appellant, the prosecution produced oral as well as documentary

evidence. It examined 12 witnesses and placed reliance on various documents such as FIR, Panchnama, PM examination Note, etc. After recording of the evidence was over, further statement of the appellant was recorded under sec. 313 of CrPC. It appears that no specific defence was taken by him. His say was that false case was filed against him.

At the end of the trial, ld. Judge came to the conclusion that the prosecution had proved its case against the appellant beyond any reasonable doubt and, therefore, he convicted the appellant for the offence under sec. 302 of IPC and sentenced him to suffer imprisonment for life. It is this judgment and order of conviction and sentence which are challenged in this appeal before this court.

We have heard Mr. Hriday Buch ld. advocate for the appellant appearing with Ms. Sunita Barot for the appellant and Mr. RC Kodekar ld. APP for the respondent-State.

It is submitted by Mr. Buch that the judgment and order of conviction and sentence passed by the ld. Judge are erroneous since the prosecution has not been able to prove its case against the appellant. He has submitted that there is no eye witness to the incident except the child namely Hetal, who at the relevant time was aged about 6 years. In his submission, without any corroboration, no conviction can be based on the sole testimony of a child witness. In the alternative, he has submitted that even if it is believed that the appellant was responsible for causing the death of deceased, the facts and circumstances on record clearly shows that the act was as a result of sudden quarrel, without any premeditation on the part of the appellant in a heat of moment and, therefore, it cannot be said that he had any intention to cause death of the deceased. According to him, it would be an offence falling either under sec. 304 Part-I or Part-II of I.P.C.

As against that, Mr. RC Kodekar ld. APP has supported the judgment. He has submitted that considering the fact that the appellant had caused injuries on the vital part of the body with dangerous weapon such as heavy hammer the intention to cause death could safely be inferred. In his submission, the act of the appellant would squarely stand covered under the provisions of sec. 300 of IPC and, therefore, he has been rightly convicted by the trial court for the offence

under sec. 302 of IPC. He has submitted that this appeal has no merit and it deserves to be dismissed.

4. With a view to reappreciate the evidence, we have carefully perused the record of the case. We have also carefully considered the rival submissions. From the record, it is clear that the relations between the appellant and the deceased did not remain cordial for some time prior to the date of incident, because there was difference of opinion between them with regard to the termination of pregnancy. The appellant did not want the deceased to get the abortion done, whereas, the deceased wanted to go for it since her previous two deliveries were done by performing cesarean. She was feeling apprehensive because doctor who was treating her namely Dr. Jalu of Junagadh had opined that the delivery would not be easy and it could create complications. In fact, when the informant and Meramanbhai had been to the house of the appellant to take the deceased with them since her mother had been injured by buffalo, the appellant called the sarpanch of the village Bamsana and also about 6 to 7 other persons to be witness to the informant taking the deceased with him and also to impress upon the father of the deceased that in no circumstance the deceased should get the pregnancy terminated. The deceased was taken back to the house of the appellant about a week thereafter i.e. on 23.1.1994, and on next day, i.e. on 24.1.1994, at about 10.00pm, the incident took place. It is also clear from the record that at the time when blows were inflicted in the house of the appellant, which is situated in the farm, only their daughter Hetal was present. She raised scream and on hearing the scream, one Kasam from the neighbourhood rushed there and he asked the appellant what had happened. The appellant informed him that everything was over. Kasam had seen the deceased lying on the floor. She was about to breath her last. Kasam went to the place of Varjangbhai. From there, Kasam, Varjang and Hardas again went to the house of the appellant and found that the lady had received injuries on the head and she was about to pass away. They lifted her and put her on the cot and took the girl Hetal with them since she was very much scared and expressed her desire to go with them. As stated above, Hardas and Kasam went to the village of Nunarda and informed the father of the deceased about the incident.

In view of the aforesaid facts, the evidence of PW-3 Hetal Mansukh ex. 18 becomes very important. She is daughter of the appellant and deceased. At the time of recording of her evidence, she was aged about 8 years.

With a view to ascertain whether she would be in a position to give deposition before the court, certain questions were put to her as in which standard, she was studying and she has answered that she was studying in a Government school in first standard at village Nunarda. She was again asked that before starting of the class what they are required to do and she has answered that they are required to recite prayer and devotional song. In answer to a question that whose prayer they are reciting and she has answered that they are reciting prayer of the Goddess. She has been further asked if the prayers are not performed, what would happen. She has said that it would amount to committing sin. Lastly, she has been asked what would happen if she told a lie and she has answered that it would amount to committing sin and the Goddess would punish her by inflicting fever on her. In the opinion of the trial court, the child was able to understand the sanctity of oath and hence, oath was administered to her.

In the examination-in-chief, she has stated that deceased Gitaben was her mother. She has also identified the appellant who was present in the court room stating that he was her father. She has further stated that her mother Gitaben has expired. She has expired about three months' back. She has further stated that her father Mansukh had inflicted a blow with heavy hammer on the head of her mother Gitaben. At that time, she was sleeping on a cot. She has further stated that because her mother wanted to go to village Nunarda, there was a quarrel between the appellant and her mother. In the quarrel, when the appellant hit her with hammer, she closed her eyes. She has also stated that her father had given 4 to 5 blows on the head and also on the back with hammer. At that time, she was crying. She has further stated that Varjang, Hardas and Kasam, who were having their farms in the neighbourhood, came there and they lifted her mother and placed her on the cot. Her body was covered with the bed-sheet. She has stated that Kasam and Hardas had reached her on motorbike at village Nunarda. She was shown article muddamal no. 7 i.e. hammer which was used as weapon by the appellant and she identified the same by saying that it was the same hammer with which the appellant had caused injuries to her mother. In the cross-examination, she has stated that after the incident, the police did not approach her. She has further stated that at the time of incident, she was not admitted in the school and she was not going to the school. She has further stated that she was going to Nunarda occasionally prior to the date of incident. She has admitted that there is no light in the farm. She

has, however, denied the suggestion that she was already sleeping when the incident took place. She has stated that she was very much awake when her mother was assaulted. She has denied that because her mother did not cook food there was a quarrel. She hashowever admitted that she was telling for the first time in the court that on account of going to village Nunarda, there was a quarrel between her mother and father. She has also stated that she has not stated this fact in the police statement. She has denied that in her police statement, she had stated that "my father had returned from the village and he asked for food from my mother, but my mother said no, and, therefore, my father and mother started quarreling." She has further stated that the house of Hardas Master is nearest one to her farm. She has stated that on the date of deposition, she was staying with her maternal uncle. She has also admitted that she had been asked by her maternal uncle that she should state in the court regarding appellant having given blows with hammer. She has denied that on the day of incident, there was no quarrel between her mother and father. She has stated that it was not true that she and her father were not present in their house at the time of incident.

PW-4 Kasam Hasabhai Ex. 19 is the person who immediately went to the house of the appellant on hearing shouts of Hetal. He is a resident of village Muliyasar. According to this witness, the boundary of village Muliyasar and Bamnasa is same. He has stated that at about 4.00pm to 4.30pm, he was in the farm of Varjangbhai. He had been there because Varjangbhai had invited him and Hardasbhai for meals. He has further stated that Varjangbhai had gone to Keshod and he was waiting for him in his farm i.e. farm of Varjangbhai, but till 7.30pm, he did not reach there, he therefore had his meal at about 8.00pm. Hardas and Varjang came there on motorbike. Thereafter, they had taken the meal. He has also stated that at about 9.00pm to 9.30pm, he heard scream of a girl and also a lady from the farm of the appellant. On hearing the shouts, he, Varjang and Hasan reached to the spot. He enquired from the appellant that what were the shouts about and he (appellant) told them that everything was over. When they went inside, they found that a girl was raising cries and she told them that his mother had fallen down, they should make her stand. They, thereafter saw that the wife of appellant lying down on the ground. She was breathing her last. According to this witness, after placing body of deceased on the cot, they took the girl with them and took her to her maternal uncle at village Nunarda on motorbike. They

also informed about the incident to the father of the deceased. In the cross-examination, the version of this witness that he had been to the farm of Varjangbhai, was sought to be challenged by the defence. The defence has tried to show that his presence at the scene of offence was not natural. His evidence adequately supports the evidence of Hetal.

PW-5 Hardas Giga Ex. 20, also went to the house of the appellant on hearing shouts. In the examination-in-chief, he has stated that he had been to the farm of Varjang, where he had dined and after the dinner was over, Varjang, Kasam and he were sitting. They heard shouts of a small child and adult female. They rushed to the place and found the appellant standing there. The appellant informed them that everything was over. His evidence also shows that PWKasam had already made the enquiry with the appellant. Kasam ultimately told Hardas and Varjang that it was very unfortunate that the appellant had finished his wife. They saw that the deceased had expired and they lifted her and put her on the cot. He has further stated that Hetal expressed her desire to go with them and, therefore, they took her on motorbike and reached to village Nunarda. In the cross-examination, his presence in the farm of Varjang was also sought to be challenged, but the defence has not been able to elicit any fact which could be of any help to the appellant. His evidence is completely in consonance with evidence of Kasam.

PW-6 Varjang Arjan Ex. 21, he is the person who also in company of Kasam and Hardas, immediately went to the house of the appellant. His evidence is more or less on the same line as that of the evidence of Kasam and Hardas.

Thus, the evidence of these persons would adequately throw light on the happening of 24.1.1994 at the farm of the appellant. The evidence of Hetal clearly shows that it was the appellant who assaulted her mother with hammer and caused her 4 to 5 injuries on the forehead as well as on the back. She has also stated that she had raised screams which attracted the persons from the neighbourhood and PWs Kasam, Hardas and Varjang immediately rushed to the spot. The evidence of these witnesses lends complete corroboration to the version given by the daughter of the appellant, namely Hetal.

Her evidence is also duly corroborated by the medical evidence, which is produced by the prosecution in the form of evidence of Doctor Najabhai Rambhai Jalu PW-1

Ex. 15. He has stated that on 22.1.1994 Gitaben resident of village Bamnasa of Taluka Keshod, had come for treatment. She was carrying pregnancy of 2 and 1/2 months. He has further stated that he was informed by the lady that her husband was very much against the treatment and he would not allow her to go to doctor and it quite possible that he might even kill her also if she went to the doctor. In the cross-examination, the witness has stated that he had prepared the medical case papers of Gitaben, however, he had not retained them with him. He had entrusted them to the patient. He has further stated that Gitaben was brought to him by her brother. He had also stated that it was Gitaben who had informed him that she was having 2 and 1/2 month's pregnancy. He has also admitted that on the last occasion when Gitaben had been to him, he had told her that since on two previous occasions, the delivery of the child was effected by performing cesarean, on this occasion also, cesarean would be required. He has, however, denied that if on third occasion cesarean was performed, it could prove fatal. He has admitted that on the second occasion of cesarean, Gitaben had delivered a dead child. He has denied the suggestion put by the defence that he has not carried out the internal examination of the patient and he was stating about the deceased having 2 and 1/2 month's pregnancy because she had informed so. He has, however, admitted that if a woman having 2 and 1/2 month's pregnancy and if such woman died within a week and so, her Post Mortem examination would reveal her pregnancy. He has also admitted that if there is natural miscarriage or termination of pregnancy, the foetus would not be noticed in the post mortem examination if that patient dies after termination of pregnancy.

PW-8 Dr. Harjivan Gokalbhai Vamja, is the Medical Officer, who had performed the Post Mortem examination of the deceased. On 25.1.1994, according to this witness, he was discharging his duties as Medical Officer in the Primary Health Centre at Balagam. At about 11.00am, Head Constable Joshibhai of Balagam brought dead-body of Gitaben Mansukh along with police yadi and also inquest panchnama for ascertaining the cause of death. The dead body was identified by Durlabhdas Odhavdas. According to the witness, he commenced the post mortem examination at about 11.45am and completed it at 12.45noon. He has stated that it was a dead body of Hindu female aged about 27 years. Upon examination, he had noticed three injuries which have been described in his evidence. He has stated that there were following injuries on the person of the deceased:

1) injury of 1 x 1 inch on the forehead which was bleeding.

2) injury of 1/2 x 1/2 inch on the right side of forehead which was bleeding.

3) injury above the right ear of 1/2 x 1/2 inch which was bleeding.

In the opinion of the Medical Officer, these injuries would have been caused 12 hours prior to the post mortem examination. He has opined that the death was caused due to loss of blood on account of injuries suffered by the deceased on the forehead. He has further stated that the injuries shown in col. no. 17 of post mortem examination note were ante mortem and they were sufficient in ordinary course of nature to cause death. In the cross-examination by the defence, he has stated that fractures which could be caused on the hand, leg and head could be even physically examined by palpation. He has further stated that he has not described the nature of the injuries suffered by the deceased. He has also stated that such injuries could be caused by any vehicular accident. He has further admitted that the deceased was not pregnant. This witness has produced the post mortem notes which have been exhibited at ex. 25.

Thus, the aforesaid evidence of Dr. Jalu would shows that the deceased was his patient and on previous occasions and she had taken treatment from him and on two occasions he had performed cesarean. On the second occasion, the lady had delivered a dead child. His evidence also shows that just before the incident i.e. on 22.1.1994, she had been to him with her brother for treatment and he had noticed that she was carrying pregnancy of 2 and 1/2 months. His evidence, however, does not throw any light on the fact that pregnancy was terminated by him. On the contrary, it shows that she was asked to come again for further check-up, at that time, she had expressed her apprehension that her husband would not allow her to come to him and he might even kill her.

The evidence of Dr. Vamja shows that the deceased had received injuries on the forehead. They were bleeding injuries. In his opinion, these injuries were sufficient in ordinary course of nature to cause death. He has further opined that the death was caused due to extensive loss of blood. No attempt has been made by the defence to show that these injuries were not

serious injuries and they were not sufficient in ordinary course of nature to cause death. It is also not suggested to the doctor that timely treatment could have saved the life of the deceased.

At this juncture, we may refer to the evidence of first informant i.e. PW-2 Durlabhdas Odhavdas Ex. 16. He is the father of the deceased. He is the person who first approached the police at Keshod Police Station and informed them about the incident. He is not an eye witness. He is staying at village Nunarda. His evidence reveals that some time prior to the date of incident, he and one Meramanbhai had been to the house of the appellant to fetch the deceased since his wife suffered injuries which were caused by buffalo and she was unable to do the household work. His evidence also shows that there was some difference of opinion between the deceased and the appellant on account of termination of pregnancy. It is stated by him that when he told the appellant to send Gitaben with them, the appellant said that first panchas should be called and in their presence she should be allowed to go with the witness. He has also stated that the sarpanch of village Bamnasa and other 6 to 7 persons came there and in their presence the deceased was taken by the witness with him. He has also stated that they returned with her to village Bamnasa a week thereafter. They first met the sarpanch and informed him that they had brought Gitaben with them. They further informed that Gitaben was taken to Dr. Jalu for treatment and they also showed medical case papers to the sarpanch. He has stated that the reason for causing death of the deceased by the appellant could be on account of medical treatment which his daughter was taking. Despite lengthy cross-examination, the defence has not been able to elicit any fact which could go against the case of prosecution and help the defence. He was cross-examined by the defence on the aspect that whether there was any dispute with regard to the termination of pregnancy between appellant and deceased. He has denied and stated that when they gone to Bamnasa with Gitaben, they had told the sarpanch that in the opinion of the doctor, third cesarean would be very danger and the pregnancy should not be allowed to continue.

5. Thus, considering the overall evidence on record, it is very clear that the appellant was annoyed the idea of deceased getting her pregnancy terminated. There was continuous quarrels on that count between the two. So, he even felt suspicious when the father of deceased came

to take her to village Nunarda since her mother was bedridden on account of injuries suffered by her. He, therefore, summoned sarpanch and other persons to make it sure that when deceased was away from him, she should not get the pregnancy terminated. It also appears from the evidence that even when deceased returned to him on 23.1.1994, she had not got the pregnancy terminated and she was still carrying. This is clear from the evidence of informant Durlabhdas as well as the evidence of Dr. Jalu. It is argued by Mr. Buch that the evidence of Dr. Vamja shows that she was not pregnant at the time of her post mortem examination made and it would show that she had got the abortion done while she was away from the appellant. In his submission, that could be the root cause of present incident. However, the evidence of the Medical Officer shows that this was his first post mortem examination. The post mortem note did not indicate any such fact, in fact, there is no reference of condition of uterus. The evidence also does not indicate that he has specifically focussed his attention on this aspect and found that there was no foetus. In absence of this important factor, a casual statement made by him in the evidence cannot be accepted by the court. Since, there is positive reliable evidence of informant Durlabhdas as well as that of Dr. Najabhai Jalu, it is, very safe to presume that even when the lady returned to the appellant, she continued to be pregnant. According to Hetal, the quarrel took place on account of some altercation which took place between the deceased and the appellant since deceased wanted to go to village Nunarda. However, the defence has asked that such story was never told before to any one and she said it for the first time in the court. The defence has further contradicted her police statement, wherein, it has been stated that the incident had taken place because there was some quarrel on account of deceased refusing to serve food to the appellant when he returned from the village. The said contradiction has been brought on record in the evidence of Hetal. Thus, it is clear that on the night of the incident, assault was because of some altercation between husband and wife for non-cooperative attitude adopted by the wife. However, that did not give any licence to the appellant to pick up a dangerous weapon like heavy hammer and inflict fatal blows on the forehead of the deceased. The evidence of Dr. Vamja shows that the injuries suffered by the deceased were sufficient in ordinary course of nature to cause death. So far as the incident is concerned, the evidence of Hetal stands duly corroborated by the evidence of PW-Kasam, PW-Varjang and PW-Hardas. The evidence of all these 4 witnesses stand corroborated by the evidence of informant Durlabhdas. So

far as the version of the incident given by Hetal, daughter of the appellant, that her mother was given 3 to 4 blows on the head and back, is concerned, stands corroborated by the medical evidence. As stated above, deceased had sustained three injuries on the forehead and just above the forehead. In view of this evidence, there is no hesitation on our part to hold that the prosecution has duly proved that it was the appellant who had caused these injuries to the deceased with dangerous weapon like heavy hammer. Thus the issue with regard to the death being homicidal stands duly corroborated by the evidence of Medical Officer Dr. Vamja.

The next question that requires to be decided is that what offence has been committed by the appellant. It is the submission of Mr. Buch that the incident took place as a result of sudden quarrel between the appellant and deceased and the appellant without any premeditation inflicted blows with the hammer on the head. According to him, these facts can not constitute an offence punishable under sec. 302 of IPC. He has submitted that at the most, it would be an offence under sec. 304 Part-I of IPC. We are unable to accept this submission of Mr. Buch. First of all, it is clear from the evidence that though there was some difference of opinion between the husband and wife on account of termination of pregnancy and there was some quarrel on the night of the incident, that does not appear to be the immediate cause of the assault. May be that on account of this dispute, the deceased might have adopted the attitude of non-cooperation and even stopped talking to appellant. It is transpired from the evidence of Hetal that the quarrel on the fateful night had taken place because the deceased wanted to go to village Nunarda. However, the evidence further shows that this fact was stated by her for the first time while giving evidence in the court. In fact, on earlier occasion, when her statement was recorded by the police, she has stated that on the fateful night her father returned from the village and he asked her mother to serve him food, which was refused by the deceased and hence, there was a quarrel between them. Considering both these versions, it is clear that there was no quarrel on the issue of termination of pregnancy. In fact, such dispute could not have been there. Despite the opportunity, the deceased had not got the pregnancy terminated. It is, therefore, not improper for us to infer that on the fateful night, the quarrel was on account of either of the reasons given by the witness Hetal. This would not amount to giving rise to circumstances which would fall under Exception - 4 of

Sec. 300 of IPC. May be that there was some altercation or hot exchange of the words, and as a result thereof, the appellant picked up the hammer and inflicted blows on the forehead of the deceased, but such fact would not entitle the appellant to have a benefit of Exception - 4 to Sec. 300 of IPC. Here is a case, where deceased was young woman aged 27 years. She had some reason to feel annoyed with her husband and for that reason she had resorted to non-cooperative attitude, but that would not justify the act of the appellant in causing serious injuries on the forehead of the deceased with dangerous weapon, especially when the deceased was a woman, completely unarmed and defenseless. When this is the situation and when the appellant without any rhyme or reason caused her death by inflicting blows on the vital part of the body with dangerous weapon like heavy hammer, there is no difficulty for us to infer that he entertained the intention to cause her death or to cause injuries which were sufficient in ordinary course of nature to cause death since the medical evidence also shows that the injuries suffered by deceased were sufficient in ordinary course of nature to cause death. When the case of the appellant does not fall under Exception - 4 of Sec. 300 IPC and when the death has been caused by him or that the intention to causing death which sufficiently in ordinary course of nature to cause death, the offence or the act committed by the appellant would squarely fall under the provisions of sec. 300 of IPC which is made punishable under sec. 302 of IPC. In our view, the trial court has not committed any error in adjudging the appellant guilty of committing an offence under sec. 302 of IPC. We are completely in agreement with the finding of the trial court.

In view of the aforesaid, this appeal has no merit. Hence, it is hereby ordered to be dismissed.

(KSHITIJ R. VYAS, J.)

(AKSHAY H. MEHTA, J.)
mandora/